

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:

THOMAS REED,)	
CAMPBELL STATION DEVELOPMENT)	
LLC,)	
STEVE SADLER,)	
TRENCHMARK CONSTRUCTION LLC,)	DIVISION OF WATER
TIM SMITH,)	POLLUTION CONTROL
SMITH TRUCKING AND EXCAVATING)	
COMPANY,)	
AND SMITH EXCAVATING, INC.)	

RESPONDENTS

CASE NUMBER WPC07-0091

COMMISSIONER'S ORDER AND ASSESSMENT

NOW COMES James H. Fyke, Commissioner of the Tennessee Department of Environment and Conservation, and states:

PARTIES

I.

James H. Fyke is the duly appointed Commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "Commissioner" and the "Department" respectively).

II.

Thomas Reed (hereinafter "Respondent Reed") is a resident of the state of Tennessee and is the owner of property located in the Campbell Station Development. Service of process may be made on Respondent Reed at 1634 Wexford Drive, Murfreesboro, Tennessee 37129.

III.

Campbell Station Development, LLC (hereinafter "Respondent Campbell Station"), is an active limited liability company licensed to conduct business in the state of Tennessee and is the developer of Campbell Station, a mixed-use development adjacent to Campbell Station Boulevard in Williamson County (hereinafter "the site"). Service of process may be made on Respondent Campbell Station through Thomas L. Reed, Registered Agent, at 1634 Wexford Drive, Murfreesboro, Tennessee 37129.

IV.

Stephen D. Sadler (hereinafter "Respondent Sadler") is a resident of the state of Tennessee and is the principal shareholder of Trenchmark Construction, LLC. Respondent Sadler has been actively involved in the factual occurrences in this matter and has had the authority to make decision regarding compliance with the laws cited. Service of process may be made on Respondent Sadler at 3504 Shady Lane, Murfreesboro, Tennessee 37130.

V.

Trenchmark Construction, LLC (hereinafter "Respondent Trenchmark"), is an active limited liability company licensed to conduct business in the state of Tennessee and is contracted by Respondent Campbell Station, or Respondent Reed, to perform construction activities at the site. Service of process may be made on Respondent Trenchmark through Stephen D. Sadler, Registered Agent, at 215 Peacock Avenue, Murfreesboro, Tennessee 37129.

VI.

Tim Smith (hereinafter "Respondent Smith") is a resident of the state of Tennessee and is the principal shareholder of Smith Trucking and Excavating Company and Smith Excavating, Inc. As is stated in detail below Respondent Smith has been actively involved in the factual occurrences in this matter and has had the authority to make decision regarding compliance with

the laws cited. Service of process may be made on Respondent Smith at 7243 Zion Lane, Columbia, Tennessee 38401.

VII.

Smith Trucking and Excavating Company (hereinafter "Respondent Smith Trucking"), is an active corporation licensed to conduct business in the state of Tennessee and is contracted by Respondent Campbell Station, or Respondent Reed, or Respondent Trenchmark, to perform construction activities at the site. Service of process may be made on Respondent Smith through Roland M. Lowell, Registered Agent, at 501 Union Street, Nashville, Tennessee 37219.

VIII.

Smith Excavating, Inc., (hereinafter "Respondent Smith Excavating"), is an active corporation licensed to conduct business in the state of Tennessee and is contracted by Respondent Campbell Station, or Respondent Reed, or Respondent Trenchmark, to perform construction activities at the site. Service of process may be made on Respondent Smith through Roland M. Lowell, Registered Agent, at 501 Union Street, Nashville, Tennessee 37219.

JURISDICTION

IX.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) § 69-3-101 *et seq.*, the Water Quality Control Act (the "Act"), has occurred, or is about to occur, the commissioner may issue a complaint to the violator and the commissioner may order corrective action be taken pursuant to T.C.A. § 69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. § 69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. § 69-3-116 of the Act. Department Rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. § 69-3-105 and are effective as the *Official Compilation Rules*

and Regulations of the State of Tennessee, Chapters 1200-4-3 and 1200-4-4 (the “Rule”). Pursuant to T.C.A. § 69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

X.

The Respondents are “persons” as defined by T.C.A. § 69-3-103(20) and as herein described, the Respondents have violated the Act.

XI.

Tennessee Code Annotated § 69-3-108 requires a person to obtain coverage under a permit from the Department prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state. Coverage under the general permit for Storm Water Discharges Associated with Construction Activity (“TNCGP”) may be obtained by submittal of a Notice of Intent (“NOI”). Pursuant to T.C.A. § 69-3-108, Rule 1200-4-7-.04 requires a person to submit an application prior to engaging in any activity that requires an Aquatic Resource Alteration Permit (“ARAP”) that is not governed by a general permit or a § 401 Water Quality Certification. No activity may be authorized unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource value.

XII.

Grassy Branch and an unnamed wetland herein described located in Williamson County, are “waters of the state”, as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control

Board for suitable uses. Department Rule 1200-4-4, *Use Classifications for Surface Waters*, is contained in the *Rules of Tennessee Department of Environment and Conservation Division of Water Pollution Control Amendments*. Accordingly, these waters of the state are classified for the following uses: fish and aquatic life, recreation, irrigation, livestock watering and wildlife.

FACTS

XIII.

On February 23, 2004, the Division of Water Pollution Control (hereinafter "Division") received a NOI and Storm Water Pollution Prevention Plan (hereinafter "SWPPP") for construction activities at The Oaks at Campbell Station and Medical Campus and Outparcels portion of the site. Respondent Reed owns this parcel and signed the NOI as owner/developer. Respondent Sadler, representing Respondent Trenchmark, signed the NOI as contractor at this parcel of the site. The SWPPP was deficient and Respondent Reed was notified in writing on March 4, 2004, and again on August 23, 2004, via electronic facsimile, of the need to correct these deficiencies and resubmit the corrected SWPPP prior to issuance of TNCGP coverage. To date, a corrected SWPPP has not been received and TNCGP coverage for this portion of the site has not been issued.

XIV.

On June 25, 2004, the Division received a NOI and SWPPP for construction activities at Medical Campus Phases I and II portion of the site. Respondent Reed owns this parcel and Respondent Sadler signed the NOI as representative of the owner/developer. Respondent Sadler, representing Respondent Trenchmark, and Respondent Smith, representing Respondent Smith Trucking signed the NOI as contractors. The SWPPP was deficient and Respondent Sadler was notified by telephone on June 30, 2004, of the need to correct these deficiencies and resubmit the

corrected SWPPP prior to issuance of TNCGP coverage. On July 9, 2004, the Division requested a corrected SWPPP from Respondent Sadler's project consultant. To date, a corrected SWPPP has not been received and TNCGP coverage for this portion of the site has not been issued.

XV.

On June 29, 2004, the Division received a NOI for construction activities at the O'Hallorn Drive – Phases II and III portion of the site. Respondent Reed owns this parcel. Respondent Sadler signed the NOI as representative of the owner/developer and as representative of Respondent Trenchmark, contractor at the site. Respondent Smith signed the NOI as contractor as well. The SWPPP was not included with the NOI. On July 2, 2004, Division personnel notified Respondent Sadler and Respondent Reed of the need for proper signatory requirements on the NOI and also requested a SWPPP, in order to issue coverage for this portion of the site. On July 8, 2004, the Division received a SWPPP for O'Hallorn Drive – Phases II and III. The SWPPP was deficient and on July 12, 2004, the Division notified Respondents Reed and Sadler of these deficiencies and requested a corrected SWPPP be submitted. On August 23, 2004, a NOI signed by Respondent Reed as owner/developer was received. To date a corrected SWPPP has not been received and TNCGP coverage has not been issued.

XVI.

On April 27, 2005, the Division received a NOI and SWPPP for construction activities at the Campbell Station – Section XVI portion of the site. Respondent Campbell Station Development, LLC, owns this parcel and Respondent Reed signed the NOI as owner/developer. The SWPPP was deficient and Respondent Reed and Respondent Reed's consultant were

notified of these deficiencies on May 6, 2005. Coverage was not issued for this portion of the site due to SWPPP deficiencies.

XVII.

On October 7, 2005, the Division received an ARAP application signed by Respondent Reed. No plans were received with the application and Division personnel contacted Respondent Reed. Respondent Reed stated that the application was intended for a proposed minor road crossing within Campbell Station - Section XVI. Division personnel informed Respondent Reed that a complete ARAP application, including plans for the proposed minor road crossing, would be required before either ARAP or TNCGP coverage would be issued for Campbell Station - Section XVI. To date, a complete ARAP application has not been received.

XVIII.

On February 6, 2007, Division personnel conducted a complaint investigation at the site and noted that construction activities greater than one acre were underway. Division personnel noted that large areas of the site were not stable and that ineffective Erosion Prevention and Sediment Control (EPSC) measures had allowed eroded material to migrate from the site into an adjacent wetland. The construction equipment observed in these areas bore the insignia of Smith Excavating. A file review determined that TNCGP coverage had not been issued for the disturbed areas of site observed on this day. On February 8, 2007, based on prior discussions of the site, Division personnel contacted Respondent Sadler and explained the violations observed during the February 6, 2007, site investigation.

XIX.

On February 20, 2007, Division personnel returned to the site and noted that the areas observed on February 6, 2007, had been left in unstable condition. Attempts at stabilization had been made, but were inadequate to retain sediment on site.

XX.

On February 23, 2007, the Division issued NOVs to Respondents Reed, Sadler and Smith, for the violations observed during the February 6, 2007, and February 20, 2007, site inspections. The NOVs notified Respondents Reed, Sadler and Smith that the areas observed on these dates did not have coverage under the TNCGP. The NOV to Respondent Reed requested that EPSC inspection reports be submitted for the areas of the site that did have TNCGP coverage.

XXI.

On March 28, 2007, Division personnel conducted an inspection of Campbell Station Section XVI and noted that a minor road crossing had been constructed over the unnamed tributary to Grassy Branch. A subsequent file review determined that authorization for this activity had not been issued.

XXII.

On April 11, 2007, Division personnel conducted a site investigation during a rain event and noted that inadequate EPSC measures were allowing eroded material from Campbell Station – Section XVI, to migrate into adjacent storm sewer drains and to Grassy Branch. Division personnel also noted eroded material leaving The Oaks portion of the site and migrating into the adjacent wetland.

XXIII.

On April 12, 2007, Respondent Reed was again notified of the SWPPP deficiencies for Campbell Station – Section XVI. A revised SWPPP for Campbell Station – Section XVI was received on May 8, 2007. This revised SWPPP was also deficient. Based on prior contact as site contractor, Respondent Sadler, along with Respondent Reed's consultant, were notified of these deficiencies on May 8, 2007. To date, a corrected SWPPP has not been received and TNCGP coverage for this portion of the site has not been issued.

XXIV.

On April 17, 2007, Division personnel returned to the site and noted work underway in the sections of the site for which TNCGP coverage had not been issued. The construction equipment observed in these areas bore the insignia of Smith Excavating.

XXV.

On May 1, 2007, Division personnel returned to the site and noted that new soil stockpiles had been established within the site and additional material had been added to the existing stockpile.

XXVI.

On May 7, 2007, Division personnel returned to the site and noted Smith Excavating conducting land disturbing activities at the O'Hallorn Office Park section of the site. A file review determined that TNCGP coverage had not been issued for this section.

XXVII.

On May 8, 2007, Division personnel spoke with Respondent Sadler regarding the activities at the site. Division personnel reiterated that TNCGP coverage had not been issued for the portions of the site referenced above and that any land disturbing activities, including soil removal and stockpiling, were subject TNCGP permitting requirements.

XXVIII.

On May 9, 2007, the Division issued NOVs to the Respondents for the violations observed during the April, 2007 and May, 2007 site investigations. These NOVs reiterated that TNCGP coverage for the portions of the site observed during the April, 2007 and May, 2007 site inspections had not been issued and also requested that the EPSC inspection reports for those portions of the site that have TNCGP coverage be submitted within 10 days of receipt of the NOV.

VIOLATIONS

XXIX.

By altering waters of the state without authorization under an ARAP as stated herein, the Respondents have violated T.C.A. §§ 69-3-108(a)–(b), 114(b), which state in part:

§ 69-3-108(a):

Every person who is or is planning to carry on any of the activities outlined in subsection (b), other than a person who discharges into a publicly owned treatment works or who is a domestic discharger into a privately owned treatment works, or who is regulated under a general permit as described in subsection (j), shall file an application for a permit with the commissioner or, when necessary, for modification of such person's existing permit.

§ 69-3-108(b):

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately

owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any Waters of the State;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

§ 69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part.

XXX.

By discharging materials or wastewater and conducting land disturbance activities without coverage under the TNCGP as stated herein, the Respondents have violated T.C.A. Sections 69-3-108(a) and 69-3-114(b) as referenced above.

XXXI.

By causing a condition of pollution to Grassy Branch and the unnamed wetland as stated herein, the Respondents have violated T. C. A. Section 69-3-114(a).

T.C.A. §69-3-114(a) states:

- (a) It shall be unlawful for any person to discharge any substance into the waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of

the damages as defined in §69-3-103(22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

ORDER AND ASSESSMENT

XXXII.

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-109, 69-3-115 and 69-3-116, I, James H. Fyke, hereby issue the following ORDER AND ASSESSMENT to the Respondents.

1. The Respondents shall, within 30 days of receipt of this Order, establish and maintain effective EPSC measures on-site such that eroded soil is not allowed to leave the site or enter waters of the state. These EPSC measures shall be approved by the Water Pollution Control Manager in the Columbia-Environmental Field Office (CL-EFO) and the Respondents shall submit written documentation and photographic evidence indicating that appropriate EPSC measures are in place. This documentation shall be submitted to the Water Pollution Control Manager in the CL-EFO at 2484 Plus Park Drive, Columbia, Tennessee 38401, and a copy to the Water Pollution Control Enforcement and Compliance (E&C) Section Manager, at 401 Church Street, 6th Floor L&C Annex, Nashville, Tennessee 37243-1534.
2. The Respondents shall maintain the approved EPSC measures until such time as all land disturbance activities at the site are complete and erosion-preventive permanent cover is established.

3. The Respondents shall, within 30 days of receipt of this ORDER, submit an updated NOI and SWPPP for each area of the site for which coverage is required but has not been issued and obtain coverage for those areas. These documents should be submitted to the CL-EFO at the address shown in item 1, above.
4. The Respondents shall, within 30 days of receipt of this ORDER, submit a set of 'as-built' plans of the minor road crossing, to the CL-EFO at the address shown in item 1, above.
5. The Respondents shall not initiate any new construction activities at the site until TNCGP coverage has been issued, unless those activities are required to comply with the TNCGP. The Water Pollution Control Manager in the CL-EFO shall approve any such activities prior to commencement.
6. The Respondents shall, within six months of receipt of this Order and Assessment, provide documentation of attendance and successful completion of the Department's Erosion Prevention and Sediment Control Workshop, for all employees who manage or oversee construction projects to the CL-EFO and a copy to the E&C Section at the respective addresses shown in item 1, above. Information may be found on the program website at <http://www.tnepsc.org/>.
7. The Respondents shall pay a CIVIL PENALTY of ONE HUNDERED FIFTY THOUSAND DOLLARS (\$150,000.00) to the Division, hereby ASSESSED to be paid as follows:

- a. The Respondents shall, within 30 days of entry of this ORDER, pay a CIVIL PENALTY in the amount of FIFTY THOUSAND DOLLARS (\$50,000.00).
- b. If the Respondents fail to comply with Part XXXIII, item 1 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of TWENTY THOUSAND DOLLARS (\$20,000.00), payable within 30 days of default.
- c. If the Respondents fail to comply with Part XXXIII, item 2 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of TWENTY THOUSAND DOLLARS (\$20,000.00), payable within 30 days of default.
- d. If the Respondents fail to comply with Part XXXIII, item 3 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of TWENTY THOUSAND DOLLARS (\$20,000.00), payable within 30 days of default.
- e. If the Respondents fail to comply with Part XXXIII, item 4 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of TEN THOUSAND DOLLARS (\$10,000.00), payable within 30 days of default.
- f. If the Respondents fail to comply with Part XXXIII, item 5 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00), payable within 30 days of default.
- g. If the Respondents fail to comply with Part XXXIII, item 6 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the

amount of FIVE THOUSAND DOLLARS (\$5,000.00), payable within 30 days of default.

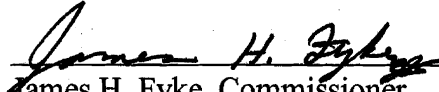
- h. In the event of default of items 1 - 6, the Respondent is hereby assessed an additional penalty in the amount FIVE HUNDRED DOLLARS (\$500.00) for each and every day the default continues. Said additional penalties are due and payable to the Department as they accrue.
- i. For good cause demonstrated by the Respondent for missing a deadline set out in the Order, the may waive the requirement that a penalty assessed by paragraph (7)(h) be paid

The Respondents shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The director may, for good cause shown, extend the compliance dates contained within this ORDER. In order to be eligible for this time extension, the Respondents shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the Division will be in writing. Should the Respondents fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondents are advised that the foregoing ORDER is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the ORDER will be one factor considered in any decision whether to take enforcement action against the Respondents in the future.

Issued by the Commissioner of the Tennessee Department of Environment and Conservation on this 24th day of July, 2007.


James H. Pyke, Commissioner
Tennessee Department of Environment and Conservation

NOTICE OF RIGHTS

Tennessee Code Annotated §§ 69-3-109 and 69-3-115, allow the Respondents to secure review of this ORDER AND ASSESSMENT. To secure review of this ORDER AND ASSESSMENT, the Respondents must file with the director at the address below a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondents must file the written petition within thirty (30) days of receiving this ORDER AND ASSESSMENT.

If the required written petition is not filed within thirty (30) days of receipt of this ORDER AND ASSESSMENT, the ORDER AND ASSESSMENT shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the ORDER AND ASSESSMENT will not be subject to review pursuant to T.C.A. §§ 69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act.) and the Department of State's Uniform Rules of Procedure for

Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondents may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization. It is the Department's position that corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented by any legal proceeding resulting from an appeal of this ORDER and ASSESSMENT by an attorney licensed to practice law in the state of Tennessee.

At the conclusion of a hearing the Board has the authority to affirm or modify, or deny the ORDER and ASSESSMENT. This includes the authority to modify the penalty within the statutory confines (up to \$10,000 TEN THOUSAND DOLLARS per day per violation).

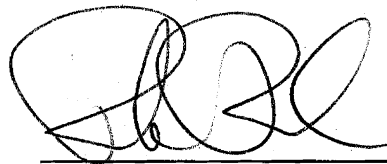
Furthermore, in the event the Board finds that the Respondent is responsible for the alleged violations after a hearing, the Board has the authority to assess additional damages incurred by the Department, including, but not limited to, all docketing expenses associated with the setting of the matter for a hearing and the hourly fees incurred due to the presence of an administrative law judge and a court reporter.

Any petition to appeal which is filed should be sent to Patrick N. Parker, Assistant General Counsel at the address listed below. All other correspondence shall be sent to Water Pollution Control Enforcement and Compliance (E&C) Section Manager, at 401 Church Street,

6th Floor L&C Annex, Nashville, Tennessee 37243-1534. The case number, WPC07-0091 should be written on all correspondence regarding this matter.

Payment of the civil penalty shall be made to "Treasurer, State of Tennessee" and shall be sent to Patrick N. Parker, Assistant General Counsel, Tennessee Department of Environment and Conservation, 401 Church Street, 20th Floor, L&C Tower, Nashville, TN 37243-1548.

The case number, WPC07-0091, should be included on or with the payment.

A handwritten signature in black ink, appearing to be 'P. Parker', written over a horizontal line.

Patrick N. Parker
Tennessee Department of Environment
& Conservation
401 Church Street
L & C Tower, 20th Floor
Nashville, TN 37243-1548